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February 1, 2001

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

EX PARTE

Magalie Roman Salas
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Re: **Written *Ex Parte* Statement of Metromedia Fiber Network Services, Inc.**

Deployment of Wireline Services Offering Advanced Telecommunications Capabilities: CC Docket No. 98-147 /

Dear Ms. Salas:

Pursuant to Section 1.1206(b)(1) of the Commission's rules, enclosed please find two copies of Metromedia Fiber Network Services, Inc. (MFN) *ex parte* letter for consideration in the above-captioned proceeding.

Sincerely,



Jonathan E. Canis
David A. Konuch
Kelley Drye & Warren, L.L.P.
Counsel for Metromedia Fiber Network Services

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

EX PARTE

Frank G. Lamancusa
Market Disputes Resolution Division
Enforcement Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

**Re: Written *Ex Parte* Statement of Metromedia Fiber Network
Services, Inc.**

**Deployment of Wireline Services Offering Advanced
Telecommunications Capabilities: CC Docket No. 98-147**

Dear Frank:

On behalf of Metromedia Fiber Network Services, Inc. (MFN), we submit this *ex parte* to notify the Commission staff of SBC Telecommunications, Inc.'s ("SBC's") continued refusal to allow MFN to collocate Fiber Distribution Frames ("FDFs") in SBC central offices. As explained in detail below, SBC's continued, anti-competitive refusal to allow collocation has no basis in law and offends the Communications Act. It is our goal that the Enforcement Bureau staff may intercede on MFN's behalf to urge SBC to reverse its position and to grant MFN's collocation applications.

As you know, MFN has been engaged in mediation with SBC under the FCC's auspices since March of 2000. With your valuable assistance, and that of other Enforcement and Common Carrier Bureau staff members, our dispute has been narrowed to a single issue: SBC's refusal to allow MFN to collocate within the SBC Central Office using a fiber distribution frame ("FDF") for the purpose of accessing unbundled network elements in order to provide a telecommunications service.

The dispute concerns situations where MFN provides fiber services over Dense Wave Division Multiplexing (DWDM) or other technologies to its customers.¹ In such cases, MFN typically places the required signal generation equipment at the customer's premises and at MFN's or its customer's facility POP location. When MFN provides its fiber services using ILEC UNEs obtained through collocation arrangements, MFN does not place electronics that light the fiber in the central office collocation space. Rather, MFN collocates a Fiber Distribution Frame, which is the physical termination point of MFN's network, to which the ILEC's loop or interoffice transport UNEs are attached. The FDF does not generate a signal in the central office, nor does it need to. Instead, it merely is a technically feasible point of interconnection where the ILEC UNE is connected to the MFN network. The telecommunications services that MFN provides between the customer premises, the carrier locations, and MFN's POP flow through the Fiber Distribution Frame between or among the points specified by the user of the telecommunications services.

SBC's claimed basis for refusing to permit collocation and interconnection is that a Fiber Distribution Frame is not "equipment necessary for interconnection or access to unbundled network elements" under the Commission's rules. SBC's argument has no basis in the Communications Act, or the Commission's rules and orders, which clearly allow collocation of such equipment.² SBC insists that MFN collocate a multiplexer in addition to the FDF before it will grant our collocation application. Lighting the fiber in the central office is wholly unnecessary because the fiber is already lit elsewhere, at the customer's premises. SBC's requirement of additional lighting of this already lit fiber is calculated merely to increase MFN's costs and to delay its network deployment. Although we expect that the Commission's upcoming order in the Advanced Services docket will address this issue explicitly, our goal is to obtain the Commission's help in persuading SBC to grant our collocation applications sooner than that.

MFN has customers it is waiting to serve in SBC's territory. Nothing has changed since we last spoke with you in the Spring of 2000. SBC's failure to grant collocation applications for deployment of FDFs has prevented MFN from serving these customers for more than a year. During that time, other BOCs, namely Qwest and BellSouth, have permitted MFN to deploy FDFs. That Qwest and BellSouth have already agreed to this deployment demonstrates that MFN's position is a reasonable one. Moreover, in the past, SBC has indicated that it *would* allow MFN to collocate an FDF.

SBC itself is on record stating that an FDF *is* equipment that may be collocated. For instance, in a March 9, 2000 letter to MFN's counsel, SBC indicated that MFN would be

¹ This is a different issue than the one that the parties settled by agreeing to MFN's "stable manhole zero" proposal outlined in previous correspondence. In the scenario that is the subject of the current dispute, MFN intends to directly interconnect and purchase unbundled network elements (UNEs) from SBC in order to provide telecommunications services to customers.

² 47 U.S.C. § 251(c)(6).

Frank G. Lamancusa
February 1, 2001
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entitled to collocation and interconnection under the Act if it “intends to pre-position dark fiber *and collocate fiber distribution frame(s)* in SBC’s Central Office(s) to enable MFN to interconnect with SBC’s network facilities for MFN’s transmission and routing of telephone exchange traffic, exchange access traffic, or both, and/or for MFN to access SBC’s unbundled network elements for the provision of telecommunications services by MFN.”³ Similarly, in a March 27, 2000 fax to MFN’s counsel, SBC again stated that “*to the extent [MFN] intends to collocate equipment (including fiber and fiber distribution frames)* to interconnect with SBC’s network for [MFN’s] transmission and routing of telephone exchange traffic, exchange access traffic, or both, and/or to access UNEs so that MFN itself can provide telecommunications services, SBC has been, and remains, willing to negotiate an interconnection agreement.”⁴

Given SBC’s prior statements, it is simply too late for SBC to deny that a Fiber Distribution Frame is “equipment” pursuant to the FCC’s rules and the Communications Act. Nonetheless, SBC’s continued intransigence is preventing MFN from serving its customers. MFN has had orders for its services since early 2000 that it cannot fulfil because of SBC’s stonewalling. These customers are being denied the promise of advanced services competition that this docket was created to provide. The Commission must take action to ensure that this stonewalling does not continue.

Sincerely,



Jonathan E. Canis
David A. Konuch

cc: Bill Kehoe
Stacy Pies
Thomas Byrnes (MFN)
Robert Riordan (MFN)
Karen Nations (MFN)
Chris Heimann (SBC)

P.S. Pursuant to § 1.1206(b)(1) of the Commission’s rules, two copies of this ex parte are being submitted to the Commission’s Secretary under separate cover.

³ See Letter from Christopher Heimann, SBC, to Jonathan Canis and David Konuch, Kelley Drye & Warren, received March 9, 2000 (emphasis supplied).

⁴ See Facsimile Transmission from Christopher Heimann, SBC, to David Konuch, Kelley, Drye & Warren, March 27, 2000 (emphasis supplied).